

THE LAW OFFICES OF GAVRIL T. GABRIEL  
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Attorney for PLAINTIFF,  
EFREN GUTIERREZ

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

EFREN GUTIERREZ, an individual,  
Plaintiff,

v.

GRAPHIC PACKAGING INTERNATIONAL,  
LLC, a Delaware Limited Liability Company;  
CARAUSTAR CUSTOM PACKAGING  
GROUP, INC., a Delaware corporation;  
GREIF, INC., a Delaware corporation and  
DOES 1 through 10, inclusive,  
Defendants.

CASE NO. 2:22-cv-06945-MWF-MAA

**FIRST AMENDED COMPLAINT FOR:**

- (1) FAILURE TO PROVIDE EMPLOYEE FILE;
- (2) DISABILITY DISCRIMINATION;
- (3) AGE DISCRIMINATION;
- (4) RETALIATION (Gov. Code, § 12940(h));
- (5) FAILURE TO PREVENT DISCRIMINATION AND RETALIATION;
- (6) FAILURE TO PROVIDE REASONABLE ACCOMMODATION;
- (7) FAILURE TO ENGAGE IN GOOD FAITH INTERACTIVE PROCESS;
- (8) RETALIATION [Labor Code, §§ 98.6, 1102.5];
- (9) UNFAIR AND UNLAWFUL BUSINESS PRACTICES (In Violation of Bus. & Prof. Code, §§ 17200 *et seq.*); and
- (10) WRONGFUL TERMINATION [In Violation of Public Policy].

Unlimited,  
Jury Trial Demanded

COMES NOW PLAINTIFF EFREN GUTIERREZ (hereafter referred to as “Mr. Gutierrez” or “Plaintiff”), and complains and alleges as follows:

**I. SUMMARY**

This is an action by Plaintiff, whose employment with GRAPHIC PACKAGING INTERNATIONAL, LLC (hereafter “Graphic Packaging” or “Defendant”) was wrongfully

1 terminated. Plaintiff brings this action against Defendant for economic, non-economic,  
 2 compensatory, and punitive damages, pursuant to *Civil Code* section 3294, pre-judgment interest  
 3 pursuant to *Code of Civil Procedure* section 3291, and costs and reasonable attorneys' fees pursuant  
 4 to *Government Code* section 12965(b) and *Code of Civil Procedure* section 1021.5.

## 5 II. PARTIES

6 1. *Plaintiff*: Plaintiff is, and at all times mentioned in this First Amended Complaint  
 7 was, a resident of the County of Los Angeles, California. Plaintiff was employed by Defendant in  
 8 the City of Commerce, County of Los Angeles, State of California.

9 2. *Defendants*: Defendants GRAPHIC PACKAGING INTERNATIONAL, LLC and  
 10 DOES 1 through 10 (hereafter collectively referred to as "Graphic Packaging" or "Defendant") are,  
 11 and at all times relevant were, a Delaware Limited Liability Company organized and existing by  
 12 virtue of the laws of the State of Delaware, are qualified to do business and are doing business in  
 13 the State of California, with their relevant place of business in the City of Commerce, County of  
 14 Los Angeles, California.

15 3. CARAUSTAR CUSTOM PACKAGING GROUP, INC., a Delaware corporation  
 16 ("Caraustar") are, and at all times relevant were, a Delaware corporation organized and existing by  
 17 virtue of the laws of the State of Delaware, are qualified to do business and are doing business in  
 18 the State of California, with their relevant place of business in the City of Commerce, County of  
 19 Los Angeles, California.

20 4. GREIF, INC., a Delaware corporation ("Greif") are, and at all times relevant were,  
 21 a Delaware corporation organized and existing by virtue of the laws of the State of Delaware, are  
 22 qualified to do business and are doing business in the State of California, with their relevant place  
 23 of business in the City of Commerce, County of Los Angeles, California.

24 5. *Doe Defendants*: Defendants Does 1 through 10, inclusive, are sued under fictitious  
 25 names pursuant to *Code of Civil Procedure* section 474. Plaintiff is informed and believes, and on  
 26 that basis alleges, that each of the Defendants sued under fictitious names are in some manner  
 27 responsible for the wrongs and damages alleged below, in so acting was functioning as the agent,  
 28 servant, partner, and employee of the co-Defendants, and in taking the actions mentioned below

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1 was acting within the course and scope of his or her authority as such agent, servant, partner, and  
2 employee, with the permission and consent of the co-Defendants. The named Defendants and Doe  
3 Defendants are sometimes hereafter referred to, collectively and/or individually, as "Defendants."

4 6. *Relationship of Defendants:* All Defendants were responsible for the events and  
5 damages alleged herein, including on the following bases: (a) Defendants committed the acts  
6 alleged; (b) at all relevant times, one or more of the Defendants was the agent or employee, and/or  
7 acted under the control or supervision, of one or more of the remaining Defendants and, in  
8 committing the acts alleged, acted within the course and scope of such agency and employment  
9 and/or is or are otherwise liable for Plaintiff's damages; (c) at all relevant times, there existed a  
10 unity of ownership and interest between or among two or more of the Defendants such that any  
11 individuality and separateness between or among those Defendants has ceased, and Defendants are  
12 the alter egos of one another. Defendants exercised domination and control over one another to  
13 such an extent that any individuality or separateness of Defendants does not, and at all times herein  
14 mentioned did not, exist. Adherence to the fiction of the separate existence of Defendants would  
15 permit abuse of the corporate privilege and would sanction fraud and promote injustice. All actions  
16 of all Defendants were taken by employees, supervisors, executives, officers, and directors during  
17 employment with all Defendants, were taken on behalf of all Defendants, and were engaged in,  
18 authorized, ratified, and approved of by all other Defendants.

19 7. Defendants both directly and indirectly employed Plaintiff, as defined in the Fair  
20 Employment and Housing Act ("FEHA") at *Government Code* section 12926(d).

21 8. In addition, Defendants compelled, coerced, aided, and abetted the discrimination,  
22 which is prohibited under California *Government Code* section 12940(i).

23 9. Finally, at all relevant times mentioned herein, all Defendants acted as agents of all  
24 other Defendants in committing the acts alleged herein.

### 25 III. VENUE AND JURISDICTION

26 10. Venue is proper in the County of Los Angeles because Defendant employed  
27 Plaintiff in the County of Los Angeles, and the acts complained of herein occurred in the County  
28 of Los Angeles.



1 **IV. FACTS COMMON TO ALL CAUSES OF ACTION**

2 11. *Plaintiff's hiring:* On or around February 4, 1987, LA Paperbox hired Plaintiff Mr.  
3 Efren Gutierrez (hereafter "Mr. Gutierrez" or "Plaintiff") as a packer. In 1993 or 1994, Mr.  
4 Gutierrez was promoted to pressman. Plaintiff's daily job duties consisted of putting rolls of paper  
5 on the machine, operating the machinery, giving breaks to his helpers, and adjusting and readjusting  
6 the machine, among other things. Plaintiff's most recent rate of compensation was \$24.00 hourly.

7 12. *Plaintiff's protected status:*

8 a. Plaintiff sustained a work-related injury during his employment and thereafter  
9 possessed a disability as defined by *Government Code* section 12926(m) in the form of  
10 shoulder impingement syndrome;

11 b. Plaintiff was approximately 52 years of age at the time of his termination;

12 c. Plaintiff requested reasonable accommodation during his employment;

13 d. Plaintiff requested that Defendant initiate a worker's compensation claim on his  
14 behalf; and

15 e. Plaintiff complained to Defendant regarding disparate treatment.

16 13. In November of 2004, Plaintiff left the company and returned on or around July 1<sup>st</sup>,  
17 2007, at which time he continued working as a pressman. In 2013, Plaintiff left again and returned  
18 in August of 2015. After multiple acquisitions, the company then-owned by Greif, Inc. was sold to  
19 Graphic Packaging International, LLC in April of 2020.

20 14. Throughout his employment, Plaintiff's job performance was outstanding, and  
21 Plaintiff's skills were unmatched.

22 15. In late 2018, Mr. Gutierrez was asked to step down and work as a pre-make ready  
23 specialist. The company insisted that Plaintiff accept the position even though it would be a  
24 substantial demotion for him. In that capacity, Plaintiff's daily job duties would include making pin  
25 drums, working on dyes, elaborating paper, and assisting the pressmen. Ultimately, Plaintiff felt  
26 compelled to accept the demotion.

27 16. After three or four months in his new role, in the first week of April of 2019,  
28 Defendant decided to have Mr. Gutierrez work again as a pressman. At that point in time, Plaintiff



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1 was experiencing severe pain in his right shoulder. Plaintiff explained to managers Rigo, Carlos  
2 and Brian, as well as to HR, that he could not lift his right shoulder and that he would not be able  
3 to perform all the job duties of a pressman without help. Plaintiff stated that he would either remain  
4 in the same position of pre-make ready specialist or acquire an assistant for the heavy lifting portion  
5 of the pressman position. Plaintiff thus requested accommodation for his shoulder.

6 17. Upon hearing that Plaintiff was not 100% able to complete the job duties of a  
7 pressman without accommodation, Defendant's managers and the HR representative told Plaintiff  
8 that there was nothing they could do for him. They told Plaintiff "go home then" until he could  
9 come back to work without work restrictions.

10 18. Thereafter, Plaintiff went to the doctor who advised Plaintiff that the injury was  
11 work-related. Plaintiff was diagnosed with shoulder impingement syndrome in his right shoulder.  
12 Plaintiff returned to work and explained his health condition and the doctor's diagnosis to his  
13 employer. Plaintiff asked Defendant to file a Worker's Compensation claim on his behalf.  
14 Defendant refused.

15 19. Plaintiff was then sent to Defendant's clinic in or around early May of 2019.  
16 Plaintiff received work restrictions that did not allow him to lift more than 10-15 lbs. Defendant  
17 still refused to accommodate Plaintiff, even though there were multiple positions open, including a  
18 forklift position, where Plaintiff could temporarily be placed.

19 20. Over the next few months, Mr. Gutierrez repeatedly asked Defendant to place him  
20 in any position it determined he would be useful. Considering Plaintiff's decades of experience, he  
21 was able to perform almost all duties at the job site and serve the company in multiple ways. Still,  
22 Defendant did not accept him back. In or around July or August of 2019, HR told Plaintiff to stop  
23 going to the job site to ask for light duty work.

24 21. In or around the fall of 2019, another employee named Vincent Guzman received  
25 accommodations for his disability. Mr. Guzman was in his 20s or 30s. At that time, Plaintiff was  
26 52 years old.

27 22. Upon learning that his co-worker was accommodated while he was repeatedly told  
28 that there was no work for him, Plaintiff returned to work and complained to his managers about

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1 this injustice. Carlos replied to Plaintiff that “Brian did it,” meaning that Brian, who was the plant  
2 manager, was the one that decided to accommodate Mr. Guzman and not Plaintiff.

3 23. Plaintiff reiterated that he was willing to do any type of work that was within his  
4 work restrictions, even if the job was to sweep the floors, which is what Defendant allowed Mr.  
5 Guzman to do. Carlos replied that they had “nothing” for Plaintiff, and that since they had Victor,  
6 they did not need Plaintiff. Victor, who was in his 30s and had minimal work experience, ultimately  
7 replaced Plaintiff.

8 24. In or around September of 2019, Plaintiff complained directly to Brian about the  
9 fact that Defendant was refusing to accommodate him. Brian replied “we didn’t think you were  
10 going to come back.” In other words, Defendant had already decided to terminate Plaintiff because  
11 of his disability, his need for accommodation, his good-faith complaints and his worker’s  
12 compensation claim.

13 25. In or around October or November of 2019, Plaintiff went back to work to get his  
14 personal belongings and noticed that his locker was broken in by another employee upon his  
15 supervisors’ orders and all of its contents were gone. Plaintiff suspected that Defendant had no  
16 intention of accepting him back.

17 26. From April of 2019 until his termination on October 2, 2020, Plaintiff was told not  
18 to show up to work.

19 27. After going through several therapy sessions throughout summer until December  
20 of 2019, Plaintiff’s shoulder and elbow specialist said that Plaintiff needed surgery. Plaintiff  
21 underwent surgery in July of 2020. Plaintiff then received physical therapy until November of 2020.

22 28. From the time that the company was sold to Graphic Packaging International, the  
23 new management did not treat Plaintiff as an employee. GREIF Packaging omitted properly  
24 informing the buying company about Plaintiff’s employment. Plaintiff was not informed that  
25 GREIF Packaging had sold the company or that it had posted a list of employees who wanted to  
26 work for the new company. Thus, Plaintiff was deprived of any opportunity to apply for a position  
27 with Graphic Packaging International on equal terms with the other employees.  
28



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29. On or around September 30, 2020, Plaintiff was fully capable of returning to work. Plaintiff went to the job site intending to resume his job duties. However, HR told him that all positions within the company were filled. Plaintiff was offered severance pay, compensation for approximately five weeks of work and other relevant paperwork. Plaintiff did not agree to any of the above. Plaintiff was then given a termination notice dated October 2, 2020.

30. Plaintiff was discriminated against because of his age and disability, and retaliated against for bringing a worker's compensation claim, making good-faith complaints and needing accommodations.

31. Plaintiff has suffered both economic and non-economic damages on a continuous and ongoing basis, including, costs, attorney's fees and interest as a result of Defendant's wrongful conduct.

32. This is an action brought by Plaintiff, against Defendant, alleging, *inter alia*, (1) Failure to Provide Employee File; (2) Disability Discrimination; (3) Age Discrimination; (4) Retaliation (Gov. Code, § 12940(h)); (5) Failure to Prevent Discrimination and Retaliation; (6) Failure to Provide Reasonable Accommodation; (7) Failure to Engage in Good Faith Interactive Process; (8) Retaliation [Labor Code, §§ 98.6, 1102.5]; (9) Unfair and Unlawful Business Practices; and (10) Wrongful Termination [In Violation of Public Policy].

33. *Economic damages:* As a consequence of Defendant's conduct, Plaintiff has suffered and will suffer harm, including lost wages, lost future income and employment benefits, damage to his career, lost overtime, unpaid expenses, and penalties, as well as interest on unpaid wages at the legal rate from and after each payday on which those wages should have been paid, in a sum to be proven at trial.

34. *Non-economic damages:* As a consequence of Defendant's conduct, Plaintiff has suffered and will suffer psychological and emotional distress, humiliation, mental pain and physical pain and anguish, in a sum to be proven at trial.

35. *Punitive damages:* Defendant's conduct constitutes oppression, fraud, and/or malice under California *Civil Code* section 3294 and, thus, entitles Plaintiff to an award of exemplary and/or punitive damages.



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1 a. *Malice*: Defendant's conduct was committed with malice within the meaning of  
2 California *Civil Code* section 3294, including that (a) Defendant acted with intent to cause injury  
3 to Plaintiff and/or acted with reckless disregard for Plaintiff's injury, including by terminating  
4 Plaintiff's employment and/or taking other adverse job actions against Plaintiff because of his age,  
5 his disability, his requests for reasonable accommodation, and his good-faith complaints, and/or (b)  
6 Defendant's conduct was despicable and committed in willful and conscious disregard of Plaintiff's  
7 rights, health, and safety, including Plaintiff's right to be free of discrimination, retaliation and  
8 wrongful employment termination.

9 b. *Oppression*: In addition, and/or alternatively, Defendant's conduct was committed  
10 with oppression within the meaning of *Civil Code* section 3294, including that Defendant's actions  
11 against Plaintiff because of his age, his disability, his requests for reasonable accommodation and  
12 his good-faith complaints were "despicable" and subjected Plaintiff to cruel and unjust hardship in  
13 knowing disregard of Plaintiff's rights to a work place free of discrimination, retaliation and  
14 wrongful employment termination.

15 c. *Fraud*: In addition, and/or alternatively, Defendant's conduct, as alleged, was  
16 fraudulent within the meaning of California *Civil Code* section 3294, including that Defendant  
17 asserted false (pretextual) grounds for terminating Plaintiff's employment and/or other adverse job  
18 actions, thereby to cause Plaintiff hardship and deprive him of legal rights.

19 36. *Exhaustion of administrative remedies*: Prior to filing this action, Plaintiff  
20 exhausted his administrative remedies by filing a timely administrative complaint with the  
21 Department of Fair Employment and Housing ("DFEH") and receiving a DFEH Right to Sue letter  
22 ("Exhibit A").

23 37. *Attorneys' fees*: Plaintiff has incurred and continues to incur legal expenses and  
24 attorneys' fees.

25 **V. FIRST CAUSE OF ACTION**  
(Failure to Provide Employee File (Labor Code, § 1198.5))  
26 (Against All Defendants)

27 38. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1  
28 through 35 of this First Amended Complaint as though fully set forth herein.

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39. Pursuant to *Labor Code* section 1198.5, upon a written request from a current or former employee, or his or her representative, the employer shall provide a copy of the personnel records relating to an employee's performance, or to any grievance concerning the employee, not later than thirty (30) calendar days from the date the employer receives the request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond thirty (30) calendar days to produce a copy of the records, as long as the agreed-upon date does not exceed thirty five (35) calendar days from the employer's receipt of the written request.

40. On January 4, 2021 Plaintiff requested a copy of his employee file and payroll records from Defendant. Defendant failed to comply with Plaintiff's request and never provided Plaintiff with his employee file and payroll records.

41. Defendant's failure to produce Plaintiff's employee file was done intentionally, so as to cause injury to Plaintiff. Plaintiff is informed and believes, and thereupon alleges, that Defendant has not allowed Plaintiff to inspect his personnel records in accordance with *Labor Code* section 1198.5 in order to hide their *Labor Code* violations in the payment of wages, and therefore are subject to a civil penalty of seven hundred and fifty dollars (\$750) pursuant to *Labor Code* section 1198.5(k).

WHEREFORE, Plaintiff demands judgment as hereafter set forth.

**VI. SECOND CAUSE OF ACTION**  
(Disability Discrimination (Gov. Code, § 12940(a)))  
(Against All Defendants)

42. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1 through 41 of this First Amended Complaint as though fully set forth herein.

43. At all times mentioned herein, Defendant employed five or more persons, and *Government Code* sections 12900 *et seq.*, were in full force and effect and binding on Defendant. These sections require Defendant to refrain from discriminating against any employee as a result of an actual and/or perceived disability, pursuant to section 12940(a). Further, these sections require Defendant to refrain from discriminating against any employee for complaining about discrimination pursuant to sections 12940(h) and 12940(j)(1).

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1           44. Plaintiff is a member of more than one protected class within the meaning of  
2 *Government Code* sections 12900 *et seq.*

3           45. At all times relevant, Plaintiff was an employee of Defendant.

4           46. During Plaintiff's employment, Plaintiff possessed a disability which limited his  
5 major life activity in the form of a shoulder injury, as defined by *Government Code* section  
6 12926(m).

7           47. In or around April of 2019, after Defendant wanted to move Plaintiff back to the  
8 position of pressman, Plaintiff informed Defendant that he could not lift his right shoulder. Plaintiff  
9 requested accommodation for his disability in the form of either remaining in the same position of  
10 pre-make ready specialist, or acquiring an assistant for the heavy lifting portions of the pressman  
11 position.

12           48. Following Plaintiff's requests for reasonable accommodation, Defendant's  
13 managers and an HR Representative told Plaintiff that there was nothing they could do for him.  
14 Further, they told Plaintiff to "go home then" until he could come back to work without work  
15 restrictions.

16           49. In or around April or May of 2019, Plaintiff went to the doctor and was diagnosed  
17 with Shoulder Impingement syndrome. Plaintiff was further told that his injury was work-related.  
18 Plaintiff asked Defendant to file a worker's compensation claim on his behalf; yet Defendant  
19 refused.

20           50. Plaintiff was sent to Defendant's clinic in or around May of 2019 and received  
21 work restrictions which included no lifting more than 10-15 lbs. When Plaintiff provided his work  
22 restrictions to Defendant, Defendant refused to accommodate Plaintiff's work restrictions.

23           51. Further, Plaintiff regularly followed up with Defendant regarding his ability to  
24 return to work with work restrictions or to be temporarily placed in a position which complied with  
25 his work restrictions. Thereafter, in or around July or August of 2019, HR told Plaintiff to stop  
26 going to the job site to ask for light duty work.

27           52. On or around September 30, 2020 Plaintiff was fully capable of returning to work  
28 and went to the job site intending to resume his duties. However upon returning, Plaintiff was told



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1 that all positions within the company were filled. Plaintiff was thereafter given a termination notice  
2 dated October 2, 2020.

3 53. At all times material hereto, Plaintiff performed his duties and responsibilities as  
4 required by Defendant competently and above expectation.

5 54. Defendant treated Plaintiff less favorably than other employees. Plaintiff believes  
6 and based thereon alleges that his disability and reasonable accommodation requests were a factor  
7 in Defendant's discrimination of Plaintiff.

8 55. Plaintiff believes and based thereon alleges that his disability, as well as his  
9 requests for reasonable accommodation were contributing factors in Defendant's decision to  
10 terminate Plaintiff.

11 56. Such discrimination is in violation of *Government Code* sections 12940 *et seq.*, and  
12 has resulted in damage and injury to Plaintiff, as alleged herein.

13 57. Within the time provided by law, Plaintiff filed a complaint with the California  
14 Department of Fair Employment and Housing, in full compliance with FEHA section 2699.3 and  
15 received and served upon Defendant a Right to Sue letter.

16 58. As a proximate cause of Defendant's willful, knowing, and intentional  
17 discrimination against Plaintiff, Plaintiff has sustained, and continues to sustain, substantial losses  
18 in earnings and other employee benefits.

19 59. As a direct and proximate cause of Defendant's unlawful conduct, Plaintiff has  
20 suffered and continues to suffer humiliation, emotional distress, physical pain and mental pain and  
21 anguish, all to his damage in a sum according to proof.

22 60. Defendant was aware of its obligation not to discriminate against Plaintiff based  
23 upon his disability pursuant to *Government Code* section 12940(a). However, Defendant failed to  
24 do so. Thus, Defendant intentionally disregarded the *Government Code* and discriminated against  
25 Plaintiff, so as to cause injury to Plaintiff. Further, Defendant's conduct was despicable in that it  
26 was carried on by Defendant with a willful and conscious disregard of the rights or safety of others,  
27 thereby constituting malice as defined by *Civil Code* section 3294.

28 61. Defendant's discrimination against Plaintiff based on his disability was despicable,

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1 and subjected Plaintiff to cruel and unjust hardship by subjecting Plaintiff to unwanted disparate  
2 treatment and humiliation, as herein alleged, in conscious disregard of Plaintiff's rights, thereby  
3 constituting oppression as defined by *Civil Code* section 3294.

4 62. Defendant has acted in a malicious and oppressive manner by subjecting Plaintiff  
5 to unwanted discrimination and disparate treatment, entitling Plaintiff to punitive damages.

6 63. Plaintiff has incurred and continues to incur legal expenses and attorney's fees.  
7 Pursuant to *Government Code* section 12965(b), Plaintiff is entitled to recover reasonable  
8 attorney's fees and costs (including expert costs) in an amount according to proof.

9 64. The damages caused by Defendant are well in excess of the minimum subject  
10 matter jurisdictional amount of this Court and will be demonstrated according to proof.

11 WHEREFORE, Plaintiff demands judgment as hereafter set forth.

12  
13 **VII. THIRD CAUSE OF ACTION**  
(Age Discrimination (Gov. Code, § 12940(a)))  
14 (Against All Defendants)

15 65. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1  
16 through 64 of this First Amended Complaint as though fully set forth herein.

17 66. At all times mentioned herein, Defendant employed five or more persons, and  
18 *Government Code* sections 12900 *et seq.*, were in full force and effect and binding on Defendant.  
19 These sections require Defendant to refrain from discriminating against any employee as a result  
20 of their age pursuant to section 12940(a). Further, these sections require Defendant to refrain from  
21 discriminating against any employee for complaining about discrimination pursuant to sections  
22 12940(h) and 12940(j)(1).

23 67. Plaintiff is a member of more than one protected class within the meaning of  
24 *Government Code* sections 12900 *et seq.*

25 68. At all times relevant, Plaintiff was an employee of Defendant.

26 69. Plaintiff was approximately 52 years of age at the time of his termination.

27 70. During Plaintiff's employment with Defendant, Plaintiff experienced  
28 discrimination from Defendant in the form of disparate treatment on account of Plaintiff's age, as

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1 herein alleged.

2 71. During the period of April 2019 through July 2019, Plaintiff regularly requested  
3 reasonable accommodation for his disability/shoulder injury. Plaintiff did so until July or August  
4 of 2019 when Defendant's HR Department instructed Plaintiff to stop coming into work.

5 72. Further, in the fall of 2019, Defendant did provide reasonable accommodation for  
6 the disability of Vincent Guzman, an employee in his 20s or 30s. When Plaintiff became aware, he  
7 returned to work and complained about the fact that he was not being accommodated while his  
8 coworker Vincent was, stating this was unfair.

9 73. Plaintiff reiterated that he was willing to do any type of work that was within his  
10 work restrictions, even if the job was to sweep the floors. Carlos replied that they had "nothing" for  
11 him and that since they had Victor, they did not need Plaintiff. Victor, who was in his 30s and had  
12 minimal work experience, ultimately replaced Plaintiff.

13 74. On or around September 30, 2020 Plaintiff was fully capable of returning to work  
14 and went to the job site intending to resume his duties. However upon returning Plaintiff was told  
15 that all positions within the company were filled. Plaintiff was then given a termination notice dated  
16 October 2, 2020.

17 75. At all times material hereto, Plaintiff performed his duties and responsibilities as  
18 required by Defendant competently and above expectation.

19 76. Defendant treated Plaintiff less favorably than other employees. Plaintiff believes  
20 and based thereon alleges that his age was a factor in Defendant's discrimination of Plaintiff.

21 77. Such discrimination is in violation of *Government Code* sections 12940 *et seq.*, and  
22 has resulted in damage and injury to Plaintiff, as alleged herein.

23 78. Within the time provided by law, Plaintiff filed a complaint with the California  
24 Department of Fair Employment and Housing, in full compliance with FEHA section 2699.3 and  
25 received and served upon Defendant a Right to Sue letter.

26 79. As a proximate cause of Defendant's willful, knowing, and intentional  
27 discrimination against Plaintiff, Plaintiff has sustained, and continues to sustain, substantial losses  
28 in earnings and other employee benefits.



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80. As a direct and proximate cause of Defendant's unlawful conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, physical pain and mental pain and anguish, all to his damage in a sum according to proof.

81. Defendant was aware of its obligation not to discriminate against Plaintiff based upon his age pursuant to *Government Code* section 12940(a). However, Defendant failed to do so. Thus, Defendant intentionally disregarded the *Government Code* and discriminated against Plaintiff, so as to cause injury to Plaintiff. Further, Defendant's conduct was despicable in that it was carried on by Defendant with a willful and conscious disregard of the rights or safety of others, thereby constituting malice as defined by *Civil Code* section 3294.

82. Defendant's discrimination against Plaintiff based upon his age was despicable, and subjected Plaintiff to cruel and unjust hardship by subjecting Plaintiff to unwanted disparate treatment and humiliation, as herein alleged, in conscious disregard of Plaintiff's rights, thereby constituting oppression as defined by *Civil Code* section 3294.

83. Defendant has acted in a malicious and oppressive manner by subjecting Plaintiff to unwanted discrimination and disparate treatment, entitling Plaintiff to punitive damages.

84. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Pursuant to *Government Code* section 12965(b), Plaintiff is entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

85. The damages caused by Defendant are well in excess of the minimum subject matter jurisdictional amount of this Court and will be demonstrated according to proof.

WHEREFORE, Plaintiff demands judgment as hereafter set forth.

**VIII. FOURTH CAUSE OF ACTION**  
(Retaliation (Gov. Code, § 12940(h)))  
(Against All Defendants)

86. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1 through 85 of this First Amended Complaint as though fully set forth herein.

87. At all times mentioned herein, Defendant employed five or more persons, and *Government Code* sections 12900 *et seq.* were in full force and effect and binding on Defendant.

1 These sections require Defendant to refrain from retaliating against any employee due to an  
 2 employee's age, disability, requests for reasonable accommodation, and good-faith complaints  
 3 pursuant to section 12940(a).

4 88. Plaintiff is a member of more than one protected class within the meaning of  
 5 *Government Code* sections 12900 *et seq.*

6 89. At all relevant times, Plaintiff was an employee of Defendant.

7 90. During Plaintiff's employment, Plaintiff possessed a disability, requested  
 8 reasonable accommodation and made good-faith complaints, as herein alleged. Further, at the time  
 9 of his termination, Plaintiff was approximately 52 years of age.

10 91. During his employment Plaintiff was unlawfully discriminated against by  
 11 Defendant in retaliation for his age, his possession of a disability, his accommodation requests and  
 12 his good-faith complaints, in direct violation of FEHA.

13 92. During his employment, Plaintiff provided Defendant work restrictions for his  
 14 disability and repeatedly requested reasonable accommodation as herein alleged.

15 93. Following his reasonable accommodation requests, Defendant's agents told  
 16 Plaintiff that there was nothing they could do for him and to "go home then" until he could come  
 17 back to work without work restrictions.

18 94. In or around April or May of 2019, Plaintiff requested to initiate a worker's  
 19 compensation matter. Defendant refused.

20 95. Plaintiff continued to follow up regarding his ability to work with work restrictions  
 21 or to temporarily work in an alternative position which complied with his work restrictions. In or  
 22 around July or August of 2019, HR told Plaintiff to stop going to the job sit to ask for light duty  
 23 work.

24 96. In the fall of 2019 Plaintiff complained to Defendant's agent Carlos because  
 25 Defendant accommodated the work restrictions of Plaintiff's coworker Mr. Guzman, who was in  
 26 his 20s or 30s, but refused to accommodate Plaintiff. Plaintiff stated that such treatment was unfair.

27 97. In or around September of 2019 Plaintiff also complained to Defendant's agent  
 28 Brian, the Plant manager, about Defendant's refusal to accommodate Plaintiff.

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1           98.     On or around September 30, 2020, Plaintiff was fully capable of returning to work.  
2 Plaintiff went to the job site intending to resume his job duties, only to be told that Defendant had  
3 no positions available. Thereafter Plaintiff was given a termination notice dated October 2, 2020.

4           99.     Plaintiff's age, disability, requests for reasonable accommodation and his good-  
5 faith complaints were contributing factors in Defendant's retaliation against Plaintiff.

6           100.    Defendant's retaliation against Plaintiff was a substantial factor in causing  
7 Plaintiff's harm.

8           101.    As a proximate result of Defendant's willful, knowing, and intentional retaliation  
9 against Plaintiff, Plaintiff has sustained and continues to sustain substantial losses of earnings and  
10 other employment benefits.

11          102.    As a proximate result of Defendant's willful, knowing, and intentional retaliation  
12 against Plaintiff, Plaintiff has suffered and continues to suffer humiliation, emotional distress,  
13 physical pain and mental pain and anguish, all to his damage in a sum according to proof.

14          103.    Defendant was aware of its obligation not to retaliate against Plaintiff based upon  
15 his age, disability, reasonable accommodation requests and his good-faith complaints, pursuant to  
16 FEHA and *Government Code* sections 12940 *et seq.* However, Defendant failed to do so. Thus,  
17 Defendant intentionally disregarded FEHA and the *Government Code* and retaliated against  
18 Plaintiff, so as to cause injury to Plaintiff. Further, Defendant's conduct was despicable in that it  
19 was carried on by Defendant with a willful and conscious disregard of the rights or safety of others,  
20 thereby constituting malice as defined by *Civil Code* section 3294.

21          104.    Defendant's retaliation against Plaintiff based upon his age, disability, reasonable  
22 accommodation requests and good-faith complaints was despicable, and subjected Plaintiff to cruel  
23 and unjust hardship by subjecting Plaintiff to disparate treatment and wrongful employment  
24 termination, as herein alleged, in conscious disregard of Plaintiff's rights, thereby constituting  
25 oppression as defined by *Civil Code* section 3294.

26          105.    Defendant has acted in a malicious and oppressive manner by retaliating against  
27 Plaintiff, entitling Plaintiff to punitive damages.

28



106. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Pursuant to *Government Code* section 12965(b), Plaintiff is entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

107. The damages caused by Defendant are well in excess of the minimum subject matter jurisdictional amount of this Court, and will be demonstrated according to proof.

WHEREFORE, Plaintiff demands judgment as hereafter set forth.

#### IX. FIFTH CAUSE OF ACTION

(Failure to Prevent Discrimination and Retaliation (Gov. Code, § 12940(k)))  
(Against All Defendants)

108. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1 through 107 of this First Amended Complaint as though fully set forth herein.

109. At all times mentioned herein, Defendant employed five or more persons, and *Government Code* sections 12900 *et seq.*, were in full force and effect and binding on Defendant. These sections require Defendant to take all reasonable steps necessary to prevent discrimination and retaliation from occurring pursuant to *Government Code* section 12940(k). Prior to filing this First Amended Complaint, Plaintiff filed a timely administrative charge with the DFEH and received a Right to Sue letter.

110. At all times relevant, Plaintiff was an employee of Defendant.

111. Throughout Plaintiff's employment with Defendant, Defendant failed to prevent its employees from engaging in intentional actions that resulted in Plaintiff's being treated less favorably because of Plaintiff's protected status (*i.e.*, his age, disability, reasonable accommodation requests, worker's compensation matter and good-faith complaints). During the course of Plaintiff's employment, Defendant failed to prevent their employees from engaging in unjustified employment practices against employees in such protected classes. Plaintiff has been subjected to discrimination and retaliation, as herein described, at the hands of Defendant and Defendant's agents.

112. Defendant failed to take all reasonable steps to prevent the discrimination and retaliation faced by Plaintiff. As a result, Plaintiff was harmed.

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1 113. Defendant's failure to take all reasonable steps to prevent the discrimination and  
2 retaliation was a substantial factor in causing Plaintiff's harm.

3 114. Plaintiff believes, and on that basis alleges, that his age, his disability and  
4 reasonable accommodation requests, his worker's compensation matter and his good-faith  
5 complaints, and/or other protected status and/or other protected activity were substantial motivating  
6 factors in Defendant's discrimination and retaliation of Plaintiff.

7 115. As a proximate cause of Defendant's willful, knowing, and intentional failure to  
8 prevent discrimination and retaliation against Plaintiff, Plaintiff has sustained, and continues to  
9 sustain, substantial losses in earnings and other employee benefits.

10 116. As a direct and proximate cause of Defendant's unlawful conduct, Plaintiff has  
11 suffered and continues to suffer humiliation, emotional distress, physical pain and mental pain and  
12 anguish, all to his damage in a sum according to proof.

13 117. Defendant was aware of its obligation to prevent discrimination and retaliation,  
14 pursuant to *Government Code* section 12940(k). However, Defendant failed to do so. Thus,  
15 Defendant intentionally disregarded the *Government Code* and allowed discrimination and  
16 retaliation against Plaintiff, so as to cause injury to Plaintiff. Further, Defendant's conduct was  
17 despicable in that it was carried on by Defendant with a willful and conscious disregard of the rights  
18 or safety of others, thereby constituting malice as defined by *Civil Code* section 3294.

19 118. Defendant's failure to prevent discrimination and retaliation against Plaintiff was  
20 despicable, and subjected Plaintiff to cruel and unjust hardship by subjecting Plaintiff to said  
21 discriminatory and retaliatory conduct, as herein alleged, in conscious disregard of Plaintiff's  
22 rights, thereby constituting oppression as defined by *Civil Code* section 3294.

23 119. Defendant has acted in a malicious and oppressive manner by failing to prevent  
24 discrimination and retaliation against Plaintiff, entitling Plaintiff to punitive damages.

25 120. Plaintiff has incurred and continues to incur legal expenses and attorney's fees.  
26 Pursuant to *Government Code* section 12965(b), Plaintiff is entitled to recover reasonable  
27 attorney's fees and costs (including expert costs) in an amount according to proof.

28 121. The damages caused by Defendant are well in excess of the minimum subject



1 matter jurisdictional amount of this Court and will be demonstrated according to proof.

2 WHEREFORE, Plaintiff demands judgment as hereafter set forth.

3 **X. SIXTH CAUSE OF ACTION**

4 (Failure to Provide Reasonable Accommodation (Gov. Code, § 12940(m)))  
 5 (Against All Defendants)

6 122. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1  
 7 through 121 of this First Amended Complaint as though fully set forth herein.

8 123. At all times mentioned herein, Defendant employed five or more persons, and  
 9 *Government Code* sections 12900 *et seq.*, were in full force and effect and binding on Defendant.  
 10 These sections provide that it is an unlawful employment practice for Defendant to fail to provide  
 11 a reasonable accommodation for the actual and/or perceived disability of an employee pursuant to  
 12 section 12940(m)(1).

13 124. At all times relevant, Plaintiff was an employee of Defendant.

14 125. At all times relevant, Plaintiff possessed a disability which limited his major life  
 15 activity as defined by *Government Code* section 12926(m) in the form of shoulder impingement  
 16 syndrome. Defendant further perceived Plaintiff as possessing a disability as Plaintiff informed  
 17 Defendant of his disability/injury and requested reasonable accommodation. As such, Plaintiff is a  
 18 member of a protected class within the meaning of *Government Code* sections 12900 *et seq.* At all  
 19 times material hereto, Plaintiff satisfactorily performed his duties and responsibilities as required  
 20 by Defendant.

21 126. Plaintiff was able to perform the essential duties of his position with reasonable  
 22 accommodation for his disability.

23 127. In or around April of 2019, Plaintiff informed Defendant of his injury/disability  
 24 and requested reasonable accommodation for the position of pressman, to which Defendant wanted  
 25 to move Plaintiff. Plaintiff requested accommodation in the form of an assistant to help with the  
 26 heavy lifting portion of the position, or being allowed to remain in his then-current position of pre-  
 27 make ready specialist. Defendant refused to provide Plaintiff accommodation, stating there was  
 28 nothing they could do for him, and sent him home, telling him to "go home then" until he could



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1 return to work without restrictions.

2 128. In or around May of 2019, Plaintiff provided Defendant his work restrictions and  
3 requested to initiate a worker's compensation matter. Defendant refused to accommodate Plaintiff's  
4 work restrictions or to initiate a worker's compensation matter.

5 129. Plaintiff repeatedly followed up with Defendant thereafter regarding Defendant's  
6 ability to accommodate his work restrictions and Plaintiff's ability to return to work. Yet Defendant  
7 refused to allow Plaintiff to return to work and in July or August of 2019, Defendant told Plaintiff  
8 to stop going to the job site asking for light duty work.

9 130. Further, on or around October 2, 2020, Defendant terminated Plaintiff's  
10 employment.

11 131. Defendant refused to provide Plaintiff reasonable accommodation upon Plaintiff's  
12 request, and instead terminated Plaintiff because of his actual/perceived disability and requests for  
13 reasonable accommodation, in direct contravention of the FEHA, and specifically in violation of  
14 California *Government Code* section 12940.

15 132. Defendant failed to provide reasonable accommodation for Plaintiff's disability.  
16 Defendant's failure to provide reasonable accommodation was a substantial factor in causing  
17 Plaintiff's harm.

18 133. As a proximate cause of Defendant's willful, knowing, and intentional failure to  
19 provide reasonable accommodation, Plaintiff has sustained, and continues to sustain, substantial  
20 losses in earnings and other employee benefits.

21 134. As a direct and proximate cause of Defendant's unlawful conduct, Plaintiff has  
22 suffered and continues to suffer humiliation, emotional distress, physical pain and mental pain and  
23 anguish, all to his damage in a sum according to proof.

24 135. Defendant was aware of its obligation to provide reasonable accommodation,  
25 pursuant to *Government Code* section 12940(m). However, Defendant failed to do so. Thus,  
26 Defendant intentionally disregarded the *Government Code* and failed to provide Plaintiff  
27 reasonable accommodation, so as to cause injury to Plaintiff. Further, Defendant's conduct was  
28 despicable in that it was carried on by Defendant with a willful and conscious disregard of the rights

1 or safety of others, thereby constituting malice as defined by *Civil Code* section 3294.

2 136. Defendant's failure to provide Plaintiff reasonable accommodation was despicable,  
3 and subjected Plaintiff to cruel and unjust hardship by ignoring Plaintiff's reasonable  
4 accommodation requests and terminating his employment, in conscious disregard of Plaintiff's  
5 rights, thereby constituting oppression as defined by *Civil Code* section 3294.

6 137. Defendant has acted in a malicious and oppressive manner due to their failure to  
7 provide Plaintiff reasonable accommodation, entitling Plaintiff to punitive damages.

8 138. Plaintiff has incurred and continues to incur legal expenses and attorney's fees.  
9 Pursuant to *Government Code* section 12965(b), Plaintiff is entitled to recover reasonable  
10 attorney's fees and costs (including expert costs) in an amount according to proof.

11 139. The damages caused by Defendant are well in excess of the minimum subject  
12 matter jurisdictional amount of this Court and will be demonstrated according to proof.

13 WHEREFORE, Plaintiff demands judgment as hereafter set forth.

14 **XI. SEVENTH CAUSE OF ACTION**

15 (Failure to Engage in Good Faith Interactive Process (Gov. Code, § 12940(n)))  
16 (Against All Defendants)

17 140. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1  
18 through 139 of this First Amended Complaint as though fully set forth herein.

19 141. At all times mentioned herein, Defendant employed five or more persons, and  
20 *Government Code* sections 12900 *et seq.*, were in full force and effect and binding on Defendant.  
21 These sections provide that it is an unlawful employment practice for Defendant to fail to engage  
22 in a timely, good faith interactive process with an employee to determine effective reasonable  
23 accommodations in response to a request by an employee with an actual and/or perceived disability  
24 pursuant to section 12940(n).

25 142. At all times relevant, Plaintiff was an employee of Defendant.

26 143. Plaintiff possessed a disability which limited his major life activity as defined by  
27 *Government Code* section 12926(m) in the form of shoulder impingement syndrome. Plaintiff  
28 informed Defendant of his injury/disability, repeatedly requested reasonable accommodation and

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1 requested that Defendant file a worker's compensation claim on his behalf.

2 144. As such, Plaintiff is a member of a protected class within the meaning of  
3 *Government Code* sections 12900 *et seq.* At all times material hereto, Plaintiff satisfactorily  
4 performed his duties and responsibilities as required by Defendant.

5 145. Plaintiff was willing to participate in an interactive process to determine whether  
6 reasonable accommodation could be made so that he would be able to perform his essential job  
7 requirements.

8 146. However, Defendant failed to engage in a timely good faith interactive process with  
9 Plaintiff in response to his requests for reasonable accommodation. Rather, Defendant refused to  
10 accommodate Plaintiff's disability, and terminated Plaintiff on or around October 2, 2020.

11 147. As a result of Defendant's failure to engage in a good faith interactive process,  
12 Plaintiff was harmed.

13 148. As a proximate cause of Defendant's willful, knowing, and intentional failure to  
14 engage in a good faith interactive process, Plaintiff has sustained, and continues to sustain,  
15 substantial losses in earnings and other employee benefits.

16 149. As a direct and proximate cause of Defendant's unlawful conduct, Plaintiff has  
17 suffered and continues to suffer humiliation, emotional distress, physical pain and mental pain and  
18 anguish, all to his damage in a sum according to proof.

19 150. Defendant was aware of its obligation to engage in good faith interactive process  
20 so as to determine reasonable accommodation for Plaintiff, pursuant to *Government Code* section  
21 12940(n). However, Defendant failed to do so. Thus, Defendant intentionally disregarded the  
22 *Government Code* and failed to engage in good faith interactive process so as to determine  
23 reasonable accommodation for Plaintiff, so as to cause injury to Plaintiff. Further, Defendant's  
24 conduct was despicable in that it was carried on by Defendant with a willful and conscious disregard  
25 of the rights or safety of others, thereby constituting malice as defined by *Civil Code* section 3294.

26 151. Defendant's failure to engage in good faith interactive process was despicable, and  
27 subjected Plaintiff to cruel and unjust hardship by failing to determine reasonable accommodation  
28 for Plaintiff, risking further harm to Plaintiff, as herein alleged, in conscious disregard of Plaintiff's



1 rights, thereby constituting oppression as defined by *Civil Code* section 3294.

2 152. Defendant has acted in a malicious and oppressive manner by failing to engage in  
3 good faith interactive process to determine reasonable accommodation for Plaintiff, entitling  
4 Plaintiff to punitive damages.

5 153. Plaintiff has incurred and continues to incur legal expenses and attorney's fees.  
6 Pursuant to *Government Code* section 12965(b), Plaintiff is entitled to recover reasonable  
7 attorney's fees and costs (including expert costs) in an amount according to proof.

8 154. The damages caused by Defendant are well in excess of the minimum subject  
9 matter jurisdictional amount of this Court and will be demonstrated according to proof.

10 WHEREFORE, Plaintiff demands judgment as hereafter set forth.

11  
12 **XII. EIGHTH CAUSE OF ACTION**  
(Retaliation (*Labor Code*, §§ 98.6, 1102.5))  
13 (Against All Defendants)

14 155. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1  
15 through 154 of this First Amended Complaint as though fully set forth herein.

16 156. At all times mentioned herein, Defendant employed five or more persons, and  
17 *Labor Code* sections 98.6 and 1102.5 were in full force and effect and binding on Defendant. These  
18 sections require Defendant to refrain from retaliating against any employee as a result of the  
19 employee's opposition to practices forbidden by state or federal statute, or practices that violate or  
20 do not comply with a local, state, or federal rule or regulation pursuant to *Labor Code* sections 98.6  
21 and 1102.5(c).

22 157. At all times relevant, Plaintiff was an employee of Defendant.

23 158. During Plaintiff's employment, Plaintiff requested reasonable accommodation for  
24 his disability, requested that Defendant initiate a worker's compensation claim on his behalf, and  
25 complained regarding disparate treatment by Defendant.

26 159. In or around September of 2019, Plaintiff complained on at least two separate  
27 occasions to Defendant's agents Carlos and Brian that it was not fair for Defendant to provide  
28 accommodation for the disability of Plaintiff's coworker Vincent Guzman, who was younger than

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1 Plaintiff, while refusing to accommodate Plaintiff's work restrictions.

2 160. Further, on or around October 2, 2020, Defendant terminated Plaintiff's  
3 employment.

4 161. Plaintiff believes, and based thereon alleges, that Defendant took adverse  
5 employment actions against Plaintiff in retaliation for his complaints.

6 162. Plaintiff's accommodation requests, request to file a worker's compensation claim,  
7 and good-faith complaints to Defendant were motivating factors in Defendant's decision to take  
8 adverse employment actions against Plaintiff.

9 163. As a proximate result of Defendant's willful, knowing, and intentional retaliation  
10 against Plaintiff, Plaintiff has sustained and continues to sustain substantial losses of earnings and  
11 other employment benefits.

12 164. As a proximate result of Defendant's willful, knowing, and intentional unlawful  
13 actions against Plaintiff, Plaintiff has suffered and continues to suffer humiliation, emotional  
14 distress, physical pain and mental pain and anguish, all to his damage in a sum according to proof.

15 165. Pursuant to the *Labor Code*, the consequences for violating section 1102.5 can be  
16 significant. Specifically, employers that violate this section may be ordered to reinstate  
17 whistleblowers with backpay and benefits, pay the employee's actual damages, and/or pay a civil  
18 penalty of \$10,000 for each violation pursuant to *Labor Code* sections 98.6(b), 98.6(b)(3), 1102.5(f)  
19 and 1105.

20 166. Defendant was aware of its obligation not to retaliate against Plaintiff due to his  
21 worker's compensation claim, accommodation requests and good-faith complaints, pursuant to  
22 *Labor Code* sections 98.6 and 1102.5. However, Defendant failed to do so. Thus, Defendant  
23 intentionally disregarded the *Labor Code* and retaliated against Plaintiff, so as to cause injury to  
24 Plaintiff. Further, Defendant's conduct was despicable in that it was carried on by Defendant with  
25 a willful and conscious disregard of the rights or safety of others, thereby constituting malice as  
26 defined by *Civil Code* section 3294.

27 167. Defendant's retaliation against Plaintiff was despicable, and subjected Plaintiff to  
28 cruel and unjust hardship, as herein alleged, in conscious disregard of Plaintiff's rights, thereby

1 constituting oppression as defined by *Civil Code* section 3294.

2 168. Defendant's retaliation against Plaintiff was fraudulent in that Defendant  
3 intentionally misrepresented its reason for Plaintiff's termination. Said misrepresentation was made  
4 by Defendant in order to deprive Plaintiff of legal rights or otherwise cause him injury. Plaintiff  
5 believes and alleges that he was terminated due to his accommodation requests, worker's  
6 compensation claim and good-faith complaints. Defendant's misrepresentation of its reason for  
7 Plaintiff's termination thereby constitutes fraud as defined by *Civil Code* section 3294.

8 169. Defendant has acted in a malicious, oppressive and fraudulent manner in its  
9 retaliation against Plaintiff for engaging in protected activity, entitling Plaintiff to punitive  
10 damages.

11 170. Plaintiff has incurred and continues to incur legal expenses and attorney's fees.  
12 Pursuant to *Government Code* section 12965(b), Plaintiff is entitled to recover reasonable  
13 attorney's fees and costs (including expert costs) in an amount according to proof.

14 171. The damages caused by Defendant are well in excess of the minimum subject  
15 matter jurisdictional amount of this Court and will be demonstrated according to proof.

16 WHEREFORE, Plaintiff demands judgment as hereafter set forth.

17 **XIII. NINTH CAUSE OF ACTION**

18 (Unfair and Unlawful Business Practices (Bus. & Prof. Code, §§ 17200 *et seq.*))  
19 (Against All Defendants)

20 172. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1  
21 through 171 of this First Amended Complaint as though fully set forth herein.

22 173. Plaintiff, on behalf of himself, brings these claims pursuant to *Business &*  
23 *Professions Code* sections 17200 *et seq.* The conduct of Defendant as alleged in this First Amended  
24 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff and the general  
25 public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning  
26 of California *Code of Civil Procedure* section 1021.5.

27 174. Plaintiff is a "person who has suffered injury in fact and has lost money or property  
28 as a result of such unfair competition" within the meaning of *Business & Professions Code* section



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1 17204, in that he has been deprived of wages, and therefore has standing to bring this cause for  
2 injunctive relief, restitution, and other appropriate equitable relief.

3 175. *Business & Professions Code* sections 17200 *et seq.*, prohibit unlawful and unfair  
4 business practices.

5 176. Wage and hour laws express fundamental public policies. Providing employees  
6 with wages is also a fundamental public policy of this state and of the United States. California  
7 *Labor Code* section 90.5(a) articulates the public policies of this State to enforce vigorously  
8 minimum labor standards to ensure that employees are not required or permitted to work under  
9 substandard and unlawful conditions, and to protect law abiding employers and their employees  
10 from competitors who lower their cost by failing to comply with minimum labor standards,  
11 including failing to properly compensate employees.

12 177. Defendant, beginning at an exact date unknown to Plaintiff, but at least since the  
13 date four years prior to the filing of this suit, have committed acts of unfair competition as defined  
14 by the Unfair Business Practice Act, and have violated statutes of public policies. Through the  
15 conduct alleged in this First Amended Complaint, Defendant has acted contrary to these public  
16 policies, has violated specific provisions of the *Labor Code*, and has engaged in other unlawful and  
17 unfair business practices in violation of *Business & Professions Code* sections 17200 *et seq.*,  
18 depriving Plaintiff and all interested persons, of the benefits and privileges guaranteed to all  
19 employees under law.

20 178. The conduct of said Defendant as alleged herein, constitutes unfair competition in  
21 violation of section 17200 of the *Business & Professions Code*, in that Defendant has violated  
22 *Labor Code* section 1198.5 and 1102.5.

23 179. Defendant, by engaging in the conduct herein alleged, including but not limited to  
24 failure to provide employee file, failure to provide reasonable accommodation and retaliation,  
25 among other things, either knew, or in the exercise of reasonable care, should have known that such  
26 conduct was unlawful and a violation of section 17200 of the *Business & Professions Code*.

27 180. Unless restrained by this Court, Defendant will continue to engage in the unlawful  
28 conduct as alleged above. Pursuant to *Business & Professions Code* sections 17200 *et seq.*, this

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1 Court should make such orders or judgments, including the appointment of a receiver, as may be  
2 necessary, to prevent unlawful employment practices by Defendant, its agents or employees, of any  
3 unlawful or deceptive practice prohibited by the *Business & Professions Code*, including but not  
4 limited to, restitution which may be necessary to restore Plaintiff and other similarly situated  
5 employees, the wages Defendant has unlawfully failed to pay.

6 181. Plaintiff's success in this action will enforce important rights affecting the public  
7 interest, and in that regard, Plaintiff sues on behalf of the general public as well as himself and  
8 others similarly situated. Plaintiff is entitled to restitution, civil penalties, declaratory and injunctive  
9 relief, and all other equitable remedies owing to him.

10 182. The action is seeking to vindicate a public right, and it would be against the interests  
11 of justice to penalize Plaintiff by forcing him to pay attorneys' fees from the recovery in this action.  
12 An award of attorneys' fees is appropriate pursuant to *Code of Civil Procedure* section 1021.5 and  
13 otherwise.

14 183. The damages caused by Defendant are well in excess of the minimum subject  
15 matter jurisdictional amount of this Court and will be demonstrated according to proof.

16 WHEREFORE, Plaintiff demands judgment as hereafter set forth.

17  
18 **XIV. TENTH CAUSE OF ACTION**  
(Wrongful Termination (In Violation of Public Policy))  
19 (Against All Defendants)

20 184. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1  
21 through 183 of this First Amended Complaint as though fully set forth herein.

22 185. At all times herein mentioned in this First Amended Complaint, California  
23 *Government Code* sections 12940 *et seq.*, and California Constitution Article 1, section 8, were in  
24 full force and effect and were binding on the Defendant and the Defendant was subject to their  
25 terms, and therefore Defendant was required to refrain from violations of public policy, including  
26 discrimination on the account of Plaintiff's age, disability, accommodation requests, worker's  
27 compensation claim and good-faith complaints, among other things.

28 186. At all times relevant, Plaintiff was an employee of Defendant.



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187. On or around October 2, 2020 Defendant terminated Plaintiff's employment.

188. Plaintiff's age, disability, accommodation requests, worker's compensation claim, and good-faith complaints, among other things, were substantial motivating reasons for Defendant's decision to terminate Plaintiff. As a result of Defendant's wrongful termination of Plaintiff, Plaintiff has been harmed.

189. As a direct result of the discriminatory and retaliatory acts by Defendant, Plaintiff was terminated in direct violation of public policy. Defendant knew or reasonably should have known of the intolerable discriminatory acts and conditions and of their impact on Plaintiff.

190. As a proximate result of Defendant's willful, knowing, and intentional misconduct, Plaintiff has sustained and continues to sustain substantial losses of earnings and other employment benefits.

191. As a proximate result of Defendant's willful, knowing, and intentional misconduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, physical pain and mental pain and anguish, all to his damage in a sum according to proof.

192. Defendant was aware of its obligation not to wrongfully terminate Plaintiff based upon his age, disability, accommodation requests, worker's compensation claim, and good-faith complaints, pursuant to Public Policy. However, Defendant failed to do so. Thus, Defendant intentionally disregarded Public Policy and wrongfully terminated Plaintiff, so as to cause injury to Plaintiff. Further, Defendant's conduct was despicable in that it was carried on by Defendant with a willful and conscious disregard of the rights or safety of others, thereby constituting malice as defined by *Civil Code* section 3294.

193. Defendant's wrongful termination of Plaintiff's employment was despicable, and subjected Plaintiff to cruel and unjust hardship, as herein alleged, in conscious disregard of Plaintiff's rights, thereby constituting oppression as defined by *Civil Code* section 3294.

194. Defendant's wrongful termination of Plaintiff's employment was fraudulent in that Defendant intentionally misrepresented its reason for Plaintiff's termination. Said misrepresentation was made by Defendant in order to deprive Plaintiff of legal rights or otherwise cause him injury. Plaintiff believes and alleges that he was terminated due to his age, disability,



1 accommodation requests, worker's compensation claim and good-faith complaints. Defendant's  
 2 misrepresentation of its reason for Plaintiff's termination thereby constitutes fraud as defined by  
 3 *Civil Code* section 3294.

4 195. Defendant has acted in a malicious, oppressive and fraudulent manner in its  
 5 wrongful termination of Plaintiff, entitling Plaintiff to punitive damages.

6 196. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.  
 7 Pursuant to *Government Code* section 12965(b), Plaintiff is entitled to recover reasonable attorney's  
 8 fees and costs (including expert costs) in an amount according to proof.

9 197. The damages caused by Defendant are well in excess of the minimum subject  
 10 matter jurisdictional amount of this Court and will be demonstrated according to proof.

11 WHEREFORE, Plaintiff demands judgment as hereafter set forth.

#### 12 13 **XV. PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff prays for judgment, against Defendants, and each of them, as  
 15 follows:

#### 16 **ON ALL CAUSES OF ACTION**

- 17 1. For general damages according to proof but no less than \$1,000,000.00;
- 18 2. For special damages according to proof but no less than \$1,000,000.00;
- 19 3. For punitive damages in an amount appropriate to punish Defendant and deter  
 20 others from engaging in similar misconduct on appropriate legal causes of action;
- 21 4. For compensatory damages according to proof;
- 22 5. For penalties of no less than \$100,000.00;
- 23 6. For prejudgment interest;
- 24 7. For costs of suit, including attorneys' fees; and

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1 8. For such other relief as the Court deems just and proper.

2 DATED: October 20, 2022

3 THE LAW OFFICES OF GAVRIL T. GABRIEL

4 By: 

5 Gavril T. Gabriel, Esq.  
6 Attorney for PLAINTIFF, EFREN GUTIERREZ

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DOWNEY, CA 90241

**DEMAND FOR JURY TRIAL**

NOTICE IS HEREBY GIVEN that Plaintiff, EFREN GUTIERREZ, hereby demands trial by jury in the above-entitled matter.

DATED: October 20, 2022

THE LAW OFFICES OF GAVRIL T. GABRIEL

By: 

Gavril T. Gabriel, Esq.  
Attorney for PLAINTIFF, EFREN GUTIERREZ

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DOWNEY, CA 90241

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EXHIBIT “A”

"EXHIBIT A" ATTACHED TO COMPLAINT FOR DAMAGES



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

## Civil Rights Department

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov) | [contact.center@dfec.ca.gov](mailto:contact.center@dfec.ca.gov)

Gavril T. Gabriel  
8255 Firestone Blvd., Suite 209  
Downey, CA 90241

RE: **Notice to Complainant's Attorney**  
CRD Matter Number: 202208-17781202  
Right to Sue: Gutierrez / Graphic Packaging International, LLC et al.

Dear  
Gavril T. Gabriel

Attached is a copy of your **amended** complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq.

Pursuant to Government Code section 12962, CRD will not serve these documents on the employer. You or your client must serve the complaint.

The amended complaint is deemed to have the same filing date of the original complaint. This is not a new Right to Sue letter. The original Notice of Case Closure and Right to Sue issued in this case remains the only such notice provided by the CRD. (Cal. Code Regs., tit. 2, § 10022.)

Be advised that the CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department

1                                   **COMPLAINT OF EMPLOYMENT DISCRIMINATION**  
2                                   **BEFORE THE STATE OF CALIFORNIA**  
3                                   **Civil Rights Department**  
4                                   **Under the California Fair Employment and Housing Act**  
5                                   **(Gov. Code, § 12900 et seq.)**

6                   **In the Matter of the Complaint of**

7                   Efren Gutierrez

CRD No. 202208-17781202

8                                   Complainant,

9                   vs.

10                   Graphic Packaging International, LLC  
11                   1500 Riveredge Parkway, Suite 100  
12                   Atlanta, GA 30328

13                   Greif, Inc.  
14                   425 Winter Rd.  
15                   Delaware, OH 43105

16                   Caraustar Custom Packaging Group, Inc.  
17                   5000 Austell-Powder Springs Road  
18                   Austell, GA 30106

19                                   Respondents

20                   1. Respondent **Graphic Packaging International, LLC** is an **employer** subject to suit under  
21                   the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

22                   2. Complainant is naming **Greif, Inc.** business as Co-Respondent(s).  
23                   Complainant is naming **Caraustar Custom Packaging Group, Inc.** business as Co-  
24                   Respondent(s).

25                   3. Complainant **Efren Gutierrez**, resides in the City of , State of .

26                   4. Complainant alleges that on or about **October 2, 2020**, respondent took the  
27                   following adverse actions:

28                   **Complainant was harassed** because of complainant's disability (physical or mental), age  
                                 (40 and over).

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*Complaint – CRD No. 202208-17781202*

Date Filed: August 15, 2022

Date Amended: October 17, 2022

CRD-ENF 80 RS (Revised 10/22)



**Complainant was discriminated against** because of complainant's disability (physical or mental), age (40 and over), other and as a result of the discrimination was terminated, laid off, forced to quit, denied any employment benefit or privilege, denied reasonable accommodation for a disability, other, denied work opportunities or assignments.

**Complainant experienced retaliation** because complainant reported or resisted any form of discrimination or harassment, requested or used a disability-related accommodation and as a result was terminated, laid off, forced to quit, denied any employment benefit or privilege, denied reasonable accommodation for a disability, other, denied work opportunities or assignments.

**Additional Complaint Details:** Plaintiff's hiring: On or around February 4, 1987, LA Paperbox hired Plaintiff Mr. Efren Gutierrez (hereafter "Mr. Gutierrez" or "Plaintiff") as a packer. In 1993 or 1994, Mr. Gutierrez was promoted to pressman. Plaintiff's daily job duties consisted of putting rolls of paper on the machine, operating the machinery, giving breaks to his helpers, and adjusting and readjusting the machine, among other things. Plaintiff's most recent rate of compensation was \$24.00 hourly.

Plaintiff sustained a work-related injury during his employment and thereafter possessed a disability as defined by Government Code section 12926(m) in the form of shoulder impingement syndrome; Plaintiff was approximately 52 years of age at the time of his termination; Plaintiff requested reasonable accommodation during his employment; Plaintiff requested that Defendant initiate a worker's compensation claim on his behalf; and Plaintiff complained to Defendant regarding disparate treatment.

In November of 2004, Plaintiff left the company and returned on or around July 1st, 2007, at which time he continued working as a pressman. In 2013, Plaintiff left again and returned in August of 2015. After multiple acquisitions, the company then-owned by Greif, Inc. was sold to Graphic Packaging International, LLC in April of 2020.

Throughout his employment, Plaintiff's job performance was outstanding, and Plaintiff's skills were unmatched.

In late 2018, Mr. Gutierrez was asked to step down and work as a pre-make ready specialist. The company insisted that Plaintiff accept the position even though it would be a substantial demotion for him. In that capacity, Plaintiff's daily job duties would include making pin drums, working on dyes, elaborating paper, and assisting the pressmen. Ultimately, Plaintiff felt compelled to accept the demotion.

After three or four months in his new role, in the first week of April of 2019, Defendant decided to have Mr. Gutierrez work again as a pressman. At that point in time, Plaintiff was experiencing severe pain in his right shoulder. Plaintiff explained to managers Rigo, Carlos and Brian, as well as to HR, that he could not lift his right shoulder and that he would not be able to perform all the job duties of a pressman without help. Plaintiff stated that he would either remain in the same position of pre-make ready specialist or acquire an assistant for

-2-

*Complaint – CRD No. 202208-17781202*

Date Filed: August 15, 2022

Date Amended: October 17, 2022

CRD-ENF 80 RS (Revised 10/22)

1 the heavy lifting portion of the pressman position. Plaintiff thus requested accommodation  
2 for his shoulder.

3 Upon hearing that Plaintiff was not 100% able to complete the job duties of a pressman  
4 without accommodation, Defendant's managers and the HR representative told Plaintiff that  
5 there was nothing they could do for him. They told Plaintiff "go home then" until he could  
6 come back to work without work restrictions.

7 Thereafter, Plaintiff went to the doctor who advised Plaintiff that the injury was work-related.  
8 Plaintiff was diagnosed with shoulder impingement syndrome in his right shoulder. Plaintiff  
9 returned to work and explained his health condition and the doctor's diagnosis to his  
10 employer. Plaintiff asked Defendant to file a Worker's Compensation claim on his behalf.  
11 Defendant refused.

12 Plaintiff was then sent to Defendant's clinic in or around early May of 2019. Plaintiff received  
13 work restrictions that did not allow him to lift more than 10-15 lbs. Defendant still refused to  
14 accommodate Plaintiff, even though there were multiple positions open, including a forklift  
15 position, where Plaintiff could temporarily be placed.

16 Over the next few months, Mr. Gutierrez repeatedly asked Defendant to place him in any  
17 position it determined he would be useful. Considering Plaintiff's decades of experience, he  
18 was able to perform almost all duties at the job site and serve the company in multiple ways.  
19 Still, Defendant did not accept him back. In or around July or August of 2019, HR told  
20 Plaintiff to stop going to the job site to ask for light duty work.

21 In or around the fall of 2019, another employee named Vincent Guzman received  
22 accommodations for his disability. Mr. Guzman was in his 20s or 30s. At that time, Plaintiff  
23 was 52 years old.

24 Upon learning that his co-worker was accommodated while he was repeatedly told that  
25 there was no work for him, Plaintiff returned to work and complained to his managers about  
26 this injustice. Carlos replied to Plaintiff that "Brian did it," meaning that Brian, who was the  
27 plant manager, was the one that decided to accommodate Mr. Guzman and not Plaintiff.

28 Plaintiff reiterated that he was willing to do any type of work that was within his work  
restrictions, even if the job was to sweep the floors, which is what Defendant allowed Mr.  
Guzman to do. Carlos replied that they had "nothing" for Plaintiff, and that since they had  
Victor, they did not need Plaintiff. Victor, who was in his 30s and had minimal work  
experience, ultimately replaced Plaintiff.

In or around September of 2019, Plaintiff complained directly to Brian about the fact that  
Defendant was refusing to accommodate him. Brian replied "we didn't think you were going  
to come back." In other words, Defendant had already decided to terminate Plaintiff because  
of his disability, his need for accommodation, his good-faith complaints and his worker's  
compensation claim.



1 In or around October or November of 2019, Plaintiff went back to work to get his personal  
2 belongings and noticed that his locker was broken in by another employee upon his  
3 supervisors' orders and all of its contents were gone. Plaintiff suspected that Defendant had  
no intention of accepting him back.

4 From April of 2019 until his termination on October 2, 2020, Plaintiff was told not to show up  
to work.

5 After going through several therapy sessions throughout summer until December of 2019,  
6 Plaintiff's shoulder and elbow specialist said that Plaintiff needed surgery. Plaintiff  
underwent surgery in July of 2020. Plaintiff then received physical therapy until November of  
7 2020.

8 From the time that the company was sold to Graphic Packaging International, the new  
9 management did not treat Plaintiff as an employee. GREIF Packaging omitted properly  
informing the buying company about Plaintiff's employment. Plaintiff was not informed that  
10 GREIF Packaging had sold the company or that it had posted a list of employees who  
wanted to work for the new company. Thus, Plaintiff was deprived of any opportunity to  
11 apply for a position with Graphic Packaging International on equal terms with the other  
employees.

12 On or around September 30, 2020, Plaintiff was fully capable of returning to work. Plaintiff  
13 went to the job site intending to resume his job duties. However, HR told him that all  
positions within the company were filled. Plaintiff was offered severance pay, compensation  
14 for approximately five weeks of work and other relevant paperwork. Plaintiff did not agree to  
any of the above. Plaintiff was then given a termination notice dated October 2, 2020.

15 Plaintiff was discriminated against because of his age and disability, and retaliated against  
16 for bringing a worker's compensation claim, making good-faith complaints and needing  
accommodations.

17 Plaintiff has suffered both economic and non-economic damages on a continuous and  
18 ongoing basis, including, costs, attorney's fees and interest as a result of Defendant's  
wrongful conduct.



1 VERIFICATION

2 I, **Gavril T. Gabriel**, am the **Complainant** in the above-entitled complaint. I have read  
3 the foregoing complaint and know the contents thereof. The same is true of my own  
4 knowledge, except as to those matters which are therein alleged on information and  
belief, and as to those matters, I believe it to be true.

5 On August 15, 2022, I declare under penalty of perjury under the laws of the State of  
6 California that the foregoing is true and correct.

7 **Downey, CA**

# 2022-10-20 3078.01 First Amended Complaint

Final Audit Report

2022-10-20

|                 |                                             |
|-----------------|---------------------------------------------|
| Created:        | 2022-10-20                                  |
| By:             | Kaytlin Cooper (kcooper@gtglaw.org)         |
| Status:         | Signed                                      |
| Transaction ID: | CBJCHBCAABAAIaFghwz8BbZr0esQzYioBeXYyzArNnx |

## "2022-10-20 3078.01 First Amended Complaint" History

-  Document created by Kaytlin Cooper (kcooper@gtglaw.org)  
2022-10-20 - 7:52:34 PM GMT- IP address: 98.153.94.162
-  Document emailed to Gavril Gabriel (ggabriel@gtglaw.org) for signature  
2022-10-20 - 7:54:20 PM GMT
-  Email viewed by Gavril Gabriel (ggabriel@gtglaw.org)  
2022-10-20 - 7:57:06 PM GMT- IP address: 75.82.249.140
-  Document e-signed by Gavril Gabriel (ggabriel@gtglaw.org)  
Signature Date: 2022-10-20 - 7:58:11 PM GMT - Time Source: server- IP address: 75.82.249.140
-  Agreement completed.  
2022-10-20 - 7:58:11 PM GMT

**CERTIFICATE OF SERVICE**

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

I, Kaytlin Cooper, am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is:

8255 Firestone Blvd., Suite 209  
Downey, CA 90241

On October 20, 2022, I served the foregoing document described as:

**PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DAMAGES;**

on all interested parties in this action by placing ☒ a true copy ☐ the original thereof enclosed in sealed envelope(s), at Downey, California, addressed as follows:

Danielle Hultenius Moore, Esq.  
Ariella Onyeama, Esq.  
Chase P. Parongao, Esq.  
FISHER & PHILLIPS LLP  
444 South Flower Street, Suite 1500  
Los Angeles, CA 90071

*Counsel for Defendant Graphic Packaging, LLC*

☒ **BY REGULAR MAIL:** I deposited such envelope in the mail at Downey, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Downey, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC TRANSMISSION:** Pursuant to an agreement between the parties to accept service via electronic transmission, I transmitted a PDF version of this document by electronic mail to the party(s) identified on the attached service list using the e-mail address(es) indicated.

☐ **BY FACSIMILE:** I faxed said document, to the office(s) of the addressee(s) shown above, and the transmission was reported as complete and without error.

☒ I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 20, 2022, at Downey, California.

  
Kaytlin Cooper

**CERTIFICATE OF SERVICE**